

## **REMARKS**

By the present amendment, Applicants have amended Claims 1 and 14, and cancelled Claims 12 and 13. Claims 1-11 and 14-17 remain pending in the present application. Claim 1 is the sole independent claim.

Applicants appreciate the courtesies extended to their representative during the personal interview held May 31, 2007. The present response summarizes the understandings reached and substance of the interview. At the interview Applicants' representative explained that the claims and arguments were directed to Figs. 1, 2A and 2B, as representative of the present invention. Arguments were advanced that the references used in the rejections did not possess the disclosed structure for a waterproof cover. Applicants' representative pointed out that: a) Fragomeli's second resilient band (5) was not adjacent the first resilient band (6) and that the absorbent material was not restricted to only the width between the two bands; b) Baxter's strip 40 (Figs. 1 and 2) or bands 52 (Fig. 5) are flexible strips and not resilient bands and the two bands are not adjacent each other at one opening; and c) Agati et al is a design patent that did not disclose two elastic bands and did not disclose the use of an absorbent material between the two bands. The Examiner indicated that she would reconsider the rejections when the amendment was filed specifically claiming the argued features..

In the recent Office Action the Examiner rejected Claims 1-5, 7, 10, 12, and 13 under 35 U.S.C. § 102(b) as being anticipated by Fragomeli (5,924,130); and Claims 12-17 were rejected as being anticipated by Baxter (4,178,924). Claims 6 and 8-11 were rejected

under 35 U.S.C. § 103(a) as being unpatentable over Fragomeli ('130) in view of South (U.S.2004/0041853); Claims 12-15 were rejected as being unpatentable over Agati et al (Des. 406,897) in view of Aceves (6,126,621) in further view of Baychar (6,981,341); and Claims 16 and 17 were rejected as being unpatentable over Agati et al, Aceves, and Baychar, as previously applied, in further view of Baxter.

Applicant will advance arguments hereinbelow to illustrate the manner in which the presently claimed invention is patentably distinguishable from the cited and applied prior art. Reconsideration of the present application is respectfully requested.

The Examiner rejected Claims 1-5, 7, 10, 12, and 13 under 35 U.S.C. 102(b), as being anticipated by Fragomeli ('130). This rejection is respectfully traversed. Applicants' discussion of the Fragomeli reference is directed to amended claim 1. The Fragomeli reference discloses numerous embodiments of protective sleeves but each embodiment has only a single resilient band at an opening. For example, in Fig. 3, the resilient band 6 is a single band located at the at least one opening. The second resilient band 5 is located at the other opening of the sleeve. The Fragomeli device therefore does not possess the claimed structure: *"a first resilient band attached to said film at said circular opening and disposed so as to encircle each of said at least one circular opening; a second resilient band attached to said film and disposed adjacent to and at a predetermined distance from said first resilient band, so as to also encircle each of said at least one circular opening; and an absorbent medium attached to said film, and disposed only between said first and said*

*second resilient bands and totally occupying the space between said resilient bands, so as to also encircle each of said at least one circular opening...*” It is respectfully submitted that Fragomeli does not anticipate the claims as now amended.

Claims 12-17 stand rejected as being anticipated by Baxter ('924). This rejection is respectfully traversed. Applicant's discussion of the Baxter reference is directed mainly to amended claim 1. Baxter discloses a cast protector that has a seal structure (Fig. 2, element 40 or Fig. 5, elements 52) that provides sealing for an open end portion of the cast. Baxter discloses that the seal structure is “an elongated flexible strip of water impervious material such as polyethelene...” (column 3, lines 30-38). Therefore, Baxter does NOT disclose the use of two spaced apart **resilient** bands to provide the watertight seal. Furthermore, Baxter's absorbent material 34 does not totally occupy the space between the two resilient bands, as seen in Fig. 2. Also, in Fig. 5, the bands 52 are not resilient bands; the lower band is not adjacent the top band at the opening thereat; and there is no absorbent medium at the opening that totally occupies the space between the two resilient bands (at best the absorbent medium is shown as a dotted line in the middle of the protector). Furthermore, Baxter does not disclose the two layers comprising the absorbent medium; namely there is no disclosed wicking layer as recited in claim 14. It is respectfully submitted that Baxter does not anticipate amended claim 1 and that the rejection should be withdrawn.

Claims 12-15 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Agati ('897) in view of Aceves ('621) and Baychar ('341). The Examiner contends that the Agati design patent discloses a waterproof cast cover comprising a waterproof film with multiple elastic bands at an opening whereby the bands form a watertight seal against a skin surface. Technically speaking, the Agati design patent does not disclose such structure and therefore cannot be said to possess such structure. In order to advance prosecution of the application Applicants will assume that the Examiner is correct. The Aceves reference discloses a cast cover having an elastic cuff 31 at one opening and an interior possessing an **absorbent layer 40 that does not extend into the resilient cuff structure (Fig. 4)**. Since Aceves' absorbent material is not located within the resilient band it would not have been obvious to locate the absorbent material in the resilient band area of Agati. Therefore, the Aceves modified Agati device does not possess the claimed structure : *"a first resilient band attached to said film at said circular opening and disposed so as to encircle each of said at least one circular opening; a second resilient band attached to said film and disposed adjacent to and at a predetermined distance from said first resilient band, so as to also encircle each of said at least one circular opening; and an absorbent medium attached to said film, and disposed only between said first and said second resilient bands and totally occupying the space between said resilient bands, so as to also encircle each of said at least one circular opening..."* It is respectfully submitted that any rejection based upon the disclosures of Agati and Aceves is improper and should be withdrawn. The use of

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Baychar's shoe liner materials are irrelevant since there is no teaching to use them in the Aceves modified Agati device.

The claims in this application have been revised to more particularly define Applicant's waterproof cover. Reconsideration of the claims in light of the amendments and foregoing remarks is respectfully requested.

For the foregoing reasons, Applicant respectfully submits that the present application is in condition for allowance. If such is not the case, the Examiner is requested to kindly contact the undersigned in an effort to satisfactorily conclude the prosecution of this application.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'R. J. Apley', written in a cursive style.

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RJA:dht

Attachments: Petition for Extension of Time (2 months)  
Check for \$225.00